

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
EASTERN DIVISION

KAREN MOSS,	}	Case No. ED CV 14-0639-DFM
Plaintiff,		MEMORANDUM OPINION AND ORDER
v.		
CAROLYN W. COLVIN, Acting Commissioner of Social Security,		
Defendant.		

Plaintiff Karen Moss ("Plaintiff") appeals from the final decision of the Administrative Law Judge ("ALJ") denying her application for Social Security disability benefits. The Court concludes that the ALJ erred in failing to fully develop the record. The ALJ's decision is therefore reversed and the matter is remanded for further proceedings consistent with this opinion.

**I.**

**FACTUAL AND PROCEDURAL BACKGROUND**

Plaintiff filed applications for Social Security Disability Insurance and Supplemental Security Income benefits on May 25, 2011, alleging disability beginning July 1, 2007. Administrative Record ("AR") 27. After Plaintiff's application was denied, she requested a hearing before an ALJ. AR 139. A

1 hearing was held on November 2, 2012, at which Plaintiff testified as did a  
2 vocational expert (“VE”). AR 35-71. After the hearing the ALJ issued a ruling  
3 in which she found that Plaintiff had the severe impairments of chronic  
4 obstructive pulmonary disease (COPD), chronic bronchitis, seizures,  
5 depression, and bipolar disorder. AR 17. The ALJ determined that,  
6 notwithstanding these impairments, Plaintiff retained the residual functional  
7 capacity (“RFC”) to perform a full range of work at all exertional levels but  
8 with certain additional nonexertional limitations, such as no work at  
9 unprotected heights, no work around moving machinery, and no work around  
10 large bodies of water. AR 19-20. The ALJ then concluded, based on the VE’s  
11 testimony, that Plaintiff was not disabled because there were significant jobs  
12 available in the regional and national economy that Plaintiff could still perform  
13 despite her impairments. AR 26.

## 14 II.

### 15 ISSUES PRESENTED

16 The parties dispute whether the ALJ erred in: (1) considering the opinion  
17 of Plaintiff’s treating physician and developing the record; (2) weighing the  
18 opinion of lay witnesses; (3) evaluating Plaintiff’s credibility.<sup>1</sup> Joint Stipulation  
19 (“JS”) at 2-3.

## 20 III.

### 21 STANDARD OF REVIEW

22 Under 42 U.S.C. § 405(g), a district court may review the  
23 Commissioner’s decision to deny benefits. The ALJ’s findings and decision  
24 should be upheld if they are free from legal error and are supported by

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25 <sup>1</sup> Because the Court concludes that the ALJ failed to properly develop  
26 the record, the Court does not reach the other issues and will not decide  
27 whether the other issues would independently warrant relief. Upon remand,  
28 the ALJ may wish to consider Plaintiff’s other claims of error.

1 substantial evidence based on the record as a whole. 42 U.S.C. § 405(g);  
2 Richardson v. Perales, 402 U.S. 389, 401 (1971); Parra v. Astrue, 481 F.3d  
3 742, 746 (9th Cir. 2007). Substantial evidence means such relevant evidence as  
4 a reasonable person might accept as adequate to support a conclusion.  
5 Richardson, 402 U.S. at 401; Lingenfelter v. Astrue, 504 F.3d 1028, 1035 (9th  
6 Cir. 2007). It is more than a scintilla, but less than a preponderance.  
7 Lingenfelter, 504 F.3d at 1035 (citing Robbins v. Soc. Sec. Admin., 466 F.3d  
8 880, 882 (9th Cir. 2006)). To determine whether substantial evidence supports  
9 a finding, the reviewing court “must review the administrative record as a  
10 whole, weighing both the evidence that supports and the evidence that detracts  
11 from the Commissioner’s conclusion.” Reddick v. Chater, 157 F.3d 715, 720  
12 (9th Cir. 1996). “If the evidence can reasonably support either affirming or  
13 reversing,” the reviewing court “may not substitute its judgment” for that of  
14 the Commissioner. Id. at 720-21.

#### 15 IV.

#### 16 DISCUSSION

17 Plaintiff contends that the ALJ erred in failing to give controlling weight  
18 to the opinion of Plaintiff’s treating physician, Dr. Jack Lin. JS at 3. An ALJ  
19 should generally give more weight to a treating physician’s opinion than to  
20 opinions from non-treating sources. See 20 C.F.R. § 404.1527(d)(2); Lester v.  
21 Chater, 81 F.3d 821, 830 (9th Cir. 1996). The ALJ must give specific and  
22 legitimate reasons for rejecting a treating physician’s opinion in favor of a non-  
23 treating physician’s contradictory opinion. Orn v. Astrue, 495 F.3d 625, 632  
24 (9th Cir. 2007); Lester, 81 F.3d at 830. However, “[t]he ALJ need not accept  
25 the opinion of any physician, including a treating physician, if that opinion is  
26 brief, conclusory, and inadequately supported by clinical findings.” Thomas v.  
27 Barnhart, 278 F.3d 947, 957 (9th Cir. 2002); accord Tonapetyan v. Halter, 242  
28 F.3d 1144, 1149 (9th Cir. 2001).

1 Dr. Lin, a neurologist at UC Irvine, treated Plaintiff for her seizures. On  
2 October 15, 2012, Dr. Lin filled out a form supplied by Plaintiff's attorney. See  
3 AR 381-82. The ALJ summarized Dr. Lin's opinion as follows:

4 On October 15, 2012, Jack Lin, M.D., the claimant's treating  
5 physician, completed an Ability to [D]o Work Related Activities  
6 form on behalf of the claimant. He indicated the claimant suffered  
7 from forgetfulness, attention deficits, difficulty with thinking and  
8 processing information and decreased comprehension and  
9 perceptual ability. Dr. Lin opined the claimant was seriously  
10 limited or unable to meet competitive standards in all mental  
11 abilities and aptitudes needed to do unskilled and semiskilled  
12 work. He opined the claimant was limited with regard to ability to  
13 interact appropriately with the general public and ability to  
14 maintain socially appropriate behavior and was unable to meet  
15 competitive standards with regard to traveling to an unfamiliar  
16 place and using public transportation. Dr. Lin opined the claimant  
17 would miss more than four days a month of work due to her  
18 impairments.

19 AR 24 (citations omitted). In addition to the form, Dr. Lin explained his  
20 answers in a one-page addendum, where he described the symptoms caused by  
21 Plaintiff's underlying "chronic condition and past brain injuries." AR 383. Dr.  
22 Lin added that his "findings are documented and well supported by the recent  
23 neuropsychological evaluation done on the [Plaintiff.]" Id.

24 At the hearing, the ALJ asked about Dr. Lin's treatment records. AR 51.  
25 Plaintiff's attorney indicated that there was an outstanding request to UC  
26 Irvine Medical Center for Dr. Lin's records. Id. The ALJ then emphasized that  
27 she could not "give much weigh[t]" to Dr. Lin's opinion "without treatment  
28 records." AR 52. She told the attorney that he had two weeks to obtain the

1 records and that if “you have any problems getting them please submit  
2 something in writing to me.” Id. The ALJ later reiterated that she “believe[d]  
3 we’re missing a significant number of [medical] records.” AR 70.

4 On November 27, 2012, Plaintiff’s attorney submitted a request for an  
5 additional two weeks to obtain treatment records, presumably Dr. Lin’s, from  
6 UC Irvine Medical Center. AR 33. Two days later, Plaintiff’s attorney  
7 submitted medical records from Dr. Ann Hamilton, another of Plaintiff’s  
8 treating physicians, dating from May 27, 2010 until November 12, 2012. See  
9 AR 429. These records included Dr. Hamilton’s copy of certain reports from  
10 Plaintiff’s treatment at UC Irvine Medical Center, such as an October 2012  
11 report from Dr. Frank Hsu to Dr. Lin in which Dr. Hsu evaluated Plaintiff for  
12 a “phase II monitoring procedure with craniotomy on the left side . . . with  
13 grids and depth electrode placement” and “subsequent surgery for resection.”  
14 AR 438. However, the records did not include Dr. Lin’s treatment records or  
15 notes. Without directly addressing Plaintiff’s request for additional time, the  
16 ALJ issued her decision denying Plaintiff’s application for benefits on  
17 December 7, 2012. AR 15-27.

18 In her opinion, the ALJ gave Dr. Lin’s opinion “little weight,”  
19 determining that it was “brief, conclusory, and inadequately supported by  
20 clinical findings” because “Dr. Lin did not provide an explanation for this  
21 assessment, including treatment notes or mental status examination results.”  
22 AR 25. Additionally, the ALJ stated that “[Dr. Lin’s] opinion is inconsistent  
23 with the objective medical evidence as a whole already discussed above in this  
24 decision, which shows no psychiatric symptoms and no course of mental  
25 health treatment, including psychiatric visits or group therapy.” Id.

26 An ALJ has an affirmative duty to assist the claimant in developing the  
27 record at every step of the sequential evaluation process. Bustamante v.  
28 Massanari, 262 F.3d 949, 954 (9th Cir. 2001); see also Webb v. Barnhart, 433

1 F.3d 683, 687 (9th Cir. 2005). The ALJ's duty exists whether or not plaintiff is  
2 represented by counsel. Tonapetyan, 242 F.3d at 1150. However, when the  
3 claimant is unrepresented, the ALJ must be especially diligent in "exploring for  
4 all the relevant facts." Id. The ALJ's duty is triggered "when there is  
5 ambiguous evidence or when the record is inadequate to allow for proper  
6 evaluation of the evidence." Mayes v. Massanari, 276 F.3d 453, 459-60 (9th  
7 Cir. 2001).

8 An ALJ may discharge her duty to develop the record in several ways,  
9 including: subpoenaing the plaintiff's physician, submitting questions to the  
10 physician, continuing the hearing, or keeping the record open after the hearing  
11 to allow supplementation of the record. Tonapetyan, 242 F.3d at 1150.  
12 "[B]ecause treating source evidence (including opinion evidence) is important,  
13 if the evidence does not support a treating source's opinion on any issue  
14 reserved to the Commissioner and the adjudicator cannot ascertain the basis of  
15 the opinion from the case record, the adjudicator must make 'every reasonable  
16 effort' to recontact the source for clarification of the reasons for the opinion."  
17 Social Security Ruling ("SSR") 96-5p, 1996 WL 374183, at \*6 (July 2, 1996).

18 Here, as the ALJ expressly noted at the hearing, Dr. Lin's treatment  
19 records were not part of Plaintiff's hearing record. Dr. Lin's opinion indicated  
20 that it was based on Plaintiff's underlying "chronic [epilepsy] and past brain  
21 injuries" and that his findings were "documented and well supported by the  
22 recent neuropsychological evaluation," statements which should have  
23 indicated to the ALJ that there were missing records. Moreover, the records  
24 the ALJ did receive from Dr. Hamilton also showed that a video EEG study  
25 was performed on Plaintiff at UC Irvine in April 2012 and that during the  
26 study she had five seizure episodes that were confirmed to arise in her left  
27 temporal lobe. See AR 443-44. Six months later, at or near the time of Dr.  
28 Lin's opinion, a UC Irvine neurosurgeon (Dr. Hsu) wrote Dr. Lin a report in



1 which he evaluated Plaintiff for a craniotomy, a surgical operation in which a  
2 flap of the skull is removed to permit the surgeon access to the patient's brain.  
3 See AR 438-39. Against the backdrop of this evidence, whether Dr. Lin's  
4 opinion was based on sufficient objective clinical findings was a question that  
5 the ALJ should have afforded Dr. Lin the opportunity to answer and explain.  
6 In sum, the ALJ should have done more to ensure that the record was properly  
7 developed before rejecting Dr. Lin's opinion because there were no treatment  
8 records to support it.

9       The decision whether to remand for further proceedings is within this  
10 Court's discretion. Harman v. Apfel, 211 F.3d 1172, 1175-78 (9th Cir. 2000).  
11 Where no useful purpose would be served by further administrative  
12 proceedings, or where the record has been fully developed, it is appropriate to  
13 exercise this discretion to direct an immediate award of benefits. Id. at 1179  
14 (noting that "the decision of whether to remand for further proceedings turns  
15 upon the likely utility of such proceedings"); see also Benecke v. Barnhart, 379  
16 F.3d 587, 593 (9th Cir. 2004). A remand is appropriate, however, where there  
17 are outstanding issues that must be resolved before a determination of  
18 disability can be made and it is not clear from the record that the ALJ would  
19 be required to find the claimant disabled if all the evidence were properly  
20 evaluated. Bunnell v. Barnhart, 336 F.3d 1112, 1115-16 (9th Cir. 2003); see  
21 also Connett v. Barnhart, 340 F.3d 871, 876 (9th Cir. 2003). Here, remand is  
22 appropriate for the ALJ to fully and properly develop the record regarding the  
23 opinions of Plaintiff's treating physicians and to determine whether those  
24 opinions support a finding of disability.

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V.

**CONCLUSION**

For the reasons stated above, the decision of the Social Security Commissioner is REVERSED and the action is REMANDED for further proceedings consistent with this opinion.

Dated: December 5, 2014

A handwritten signature in dark ink, appearing to read 'Douglas F. McCormick', written in a cursive style.

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DOUGLAS F. McCORMICK  
United States Magistrate Judge